IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7924 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

KANUBHAI SOMABHAI RAVAL

Appearance:

1. Special Civil Application No. 7924 of 1999

MR M.S. RAO, ASSISTANT GOVT. PLEADER for Petitioner No. 1-2

MS PRITI PANDYA for Respondent No. 1

RULE SERVED BY DS for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 27/01/2004

ORAL JUDGEMENT

The present Special Civil Application is filed by the State of Gujarat through District C.H.E., and District Education Office Board, Baroda, challenging the judgement and order in Application No.723 of 1994 passed

by the learned member of the Gujarat Secondary Education Tribunal, Ahmedabad (hereinafter referred to as "the Tribunal") and the order passed in Review Application No.114 of 1998.

2. Mr.M.S. Rao, the learned Assistant Govt. Pleader has strenuously tried to assail the aforesaid judgement and order and the order in review application mainly on the ground that the same is contrary to the decision of the Honourable the Apex Court in the matter of Union of India Vs. C. Rama Swamy and others, reported in (1997) 4 SCC 647. Mr.Rao, the learned AGP mainly relied upon paras 22 and 25 of the said judgement. Mr.Rao was handicapped inasmuch as the said judgement was never cited before the Tribunal either at the time of deciding the Application No.723 of 1994 or Review Application No.114 of 1998.

3. As the facts stand, respondent no.1 herein was working as Assistant Teacher in the school at Vadodara. While in service respondent no.1 made an application in the year 1994 for correction of date of birth which was recorded to be 11.1.1939, as according to him the correct date of birth is 19.3.1940. The Teacher to establish his case, examined one Minaxiben Bharatkumar Shah and Atulbhai Babubhai Valand, employees of Vadodara Municipal Corporation, working in the Registration of Birth & Death Section, who produced original Birth and Death Register of 1939-40. It is noted by the learned Member of the Tribunal that at serial no.919 in the said original register, the birth of respondent no.1 was recorded as 19.3.1940. The said entry was made on 25.3.1940. The learned Member of the Tribunal also cross checked the case of the Teacher by examining the original Birth and Death Register for the period from 2.8.1938 to 31.7.1939 and as deposed by Shri Atulbhai Babubhai Valand, no entry regarding birth of any child to the parents of the applicant during this period was found to have been recorded.

4. The learned Judge relying upon the decision of this Court (Coram: C.K. Thakkar, J.) in Special Civil Application No.5368 of 1987 dated 04.02.2000 and another decision of this Court (Coram: S.M. Soni, J.) in Special Civil Application No.9887 of 1993 dated 28.01.1994 held that when there is a clinching evidence to show that the birth date was wrongly mentioned, the technical ground of limitation cannot be entertained and the relief cannot be negatived. The learned advocate Ms.Preeti Pandya appearing for the respondent-Teacher also relied upon the judgement of the Honourable the Apex

Court in the matter between Cement Corporation of India Ltd., Vs. Raghbir Singh and another, reported in A.I.R. 2002 SC 509 submitted that in this case no interference is called for at the hands of this Court. The present petition is filed under Article 227 of the Constitution of India. Ms.Pandya submitted that so far as delay is concerned in the case of Cement Corporation of India Ltd. (supra) before the Honourable the Apex Court, the date of birth was sought to be corrected two years after retirement and in that case as there were concurrent findings of fact, the Honourable the Apex Court did not entertain the petition. She submitted that in the case of Cement Corporation of India Ltd. (supra) before the Honourable the Apex Court, back wages were not granted for the entire period and the prayer for interest was also not granted. She submitted that in the present case the respondent teacher is not granted back wages and therefore, there is no question of granting any interest. She submitted that the only benefit, the respondent teacher is going to get is about pensionary benefits which will be paid on the enhanced length of service by virtue of this order that too by one year only.

5. Taking into consideration the fact that this petition is filed under Article 227 of the Constitution of India and taking into consideration that the learned Member of the Tribunal has taken all pains in examining the original Birth & Death Register and the evidence of two employees of Vadodara Municipal Corporation and in view of the fact that the decision which the learned Assistant Govt. Pleader, Mr.Rao wants to rely upon before this Court was not cited before either the Tribunal at the time of hearing of the main application or review application by his counterpart, this Court is of the opinion that the present petition is not required to be entertained.

6. Accordingly the petition is dismissed. Rule is discharged. No order as to costs.

(Ravi R. Tripathi, J.)

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